IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2593 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGUBHAI MATHURBHAI VASAVA & 2 - Appellant(s)
Versus
ISHWARBHAI DAHAYABHAI & 2 - Defendant(s)

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Appearance :
MR MTM HAKIM for Appellant(s) : 1 - 3.
None for respondent (s) : 1,
NOTICE SERVED BY DS for respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal filed by the original-claimants is directed against the judgment and award dated 31st December 2002 passed by the Motor Accident Claims Tribunal, Bharuch in MACP No.586 of 1996.

2. Jayaben Pravinbhai Vasava and Pravinbhai Bhagubhai Vasava died in a motor vehicle accident which took place on 6th May 1994 when the deceased were traveling in a jeep. The jeep was involved in a motor vehicle accident when the driver of the jeep lost control over steering and skidded off the road and dashed against a tree. Parents of Pravinbhai and minor daughter of Pravinbhai and Jayaben filed Claim Petition Nos.586 and 587 of 1996 for claiming compensation for the death of Jayaben and Pravinbhai respectively. In relation to the death and/or injuries to other passengers in the jeep, a number of other claim petitions also came to be filed. All the claim petitions were consolidated and were posted for leading evidence. It appears that no evidence was led in four claim petitions including the one giving rise to the present appeal. Therefore, the Tribunal dismissed those four claim petitions on the ground that the claimants did not produce any evidence though sufficient time was granted to them. The claim petitions were thus dismissed for want of prosecution. The Tribunal decided other claim petitions awarding compensation ranging from Rs.15,000/- to Rs.1,28,200/.

3. Mr.Hakim, learned advocate for the appellants has submitted that the Tribunal ought not to have dismissed the claim petition on the ground that the claimants had not led any evidence. It is also alternatively submitted that the claimants belong to poor strata of the society and that the claimants had to move from one place to another for getting work and therefore, the learned advocate appearing before the Tribunal also could not contact the appellants.

4. Though served none appears for the respondents. Even respondent No.3 Insurance Company has not appeared in response to the notice issued by this Court for final disposal of the appeal.

5. In the facts and circumstances of the case, it is not necessary to go into the larger question sought to be raised by Mr.Hakim as regards the power of the Tribunal to dismiss the claim petition for want of prosecution.

6. In view of the peculiar facts and circumstances of the case indicating that the claimants were not in a position to contact their learned advocate appearing before the Tribunal, so also the learned advocate was not in a position to contact them, we set aside the order of the Tribunal dismissing the claim petitions for want of prosecution and restore Claim Petition Nos.586 of 1996 on the file of the Motor Accident Claims Tribunal, Bharuch.

7. In order to ensure that the claimants themselves appear before the Tribunal and no exercise for service of fresh summons on the claimants is required to be undertaken, we direct the claimants to appear before the Tribunal on 14th February 2007. A notice for that purpose shall be served on respondent Nos.2 & 3 – owner and insurer of the vehicle involved in the accident. A copy of this order shall also be served on respondent Nos.2 & 3 by direct service.

The appeal is allowed accordingly.

Writ shall be sent down to the Tribunal within one week from today.

(M.S.Shah, J.)

(Akil Kureshi, J.)